Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 72-1251

In the Supreme Court of the United States

OCTOBER TERM, 1972

STANDARD OIL COMPANY OF CALIFORNIA,
Appellant,

vs.

UNITED STATES OF AMERICA

On Appeal from the United States District Court for the Northern District of California

Motion to Recall Mandate and for Leave for District Court to Consider Motion to Set Aside Judgment for Fraud Upon the Court, Pursuant to Rule 60(b), Federal Rules of Civil Procedure

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To the Honorable Chief Justice and to the Associate Justices of the Supreme Court of the United States:

STANDARD OIL COMPANY OF CALIFORNIA ("Standard") moves this Court to recall its mandate in this case and to grant leave to the United States District Court for the Northern District of California to consider a motion by Standard to set aside the judgment of the District Court for fraud upon the Court, pursuant to Rule 60(b), Federal Rules of Civil Procedure:

This motion is based upon the following facts:

(1) In this civil suit, the United States obtained a judgment against Standard for violations of Section 3 of the Sherman Act.

(2) In a subsequent treble damage action based upon the Government decree, Standard has discovered:

(a) The treble damage plaintiff, who was a material witness in the suit by the United States, failed to produce relevant documents in his possession called for by a subpoena duces tecum.

(b) The agent of the treble damage plaintiff, who was a material witness in the suit by the United States, failed to produce relevant documents in his possession despite repeated requests by Standard;

(c) The attorney who was retained by the treble damage plaintiff during the pendency of the suit by the United States, in connection with the contemplated treble damage action against Standard, failed to produce relevant documents in his possession called for by a subpoena duces tecum, and falsely represented to Standard that there were no additional relevant documents in the files of the treble damage plaintiff, the agent, or his own files, or in the files of other attorneys consulted by him.

(d) The documents which were not produced in this suit disclose facts which were important to Standard's defense, which contradicted the testimony of the treble damage plaintiff cited by the District Court in support of a finding in this suit, and which on cross-examination would have put a different light on the testimony of witnesses and the information in other documents.

(e) The Department of Justice failed to produce for Standard in this suit documents received by it from the treble damage plaintiff's agent after trial, but before the hearing on relief, which documents had been requested by Standard prior to trial, and which had been called for by the District Judge in connection with the relief proceedings. One of these documents

contradicted a finding which had been proposed by the United States and entered by the Court.

(f) The treble damage plaintiff's agent testified that documents not disclosed to Standard in this suit were in his files and were made available to the Department of Justice prior to trial. The Department of Justice did not produce these documents to Standard, despite requests by Standard.

Because this Court has affirmed the judgment of the District Court for the Northern District of California which heard this suit, Standard must first request this Court to recall its mandate and to permit the United States District Court for the Northern District of California to consider a motion under Rule 60(b), before the motion can be filed in the District Court.

This motion makes that request. The motion is made in the interest of securing justice for Standard and preserving the integrity of the judicial process. It is based upon the facts set forth herein, upon the brief and appendix filed by Standard in support of this motion, and upon the records of this Court in this litigation.

Dated: June 21, 1976.

Respectfully submitted,

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